Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Comment Sought on Streamlining Deployment	)	WT Docket No. 16-421
of Small Cell Infrastructure by Improving	)	
Wireless Siting Policies	)	
	)	
Mobilitie, LLC Petition for Declaratory Ruling	)	
	)	

COMMENTS OF MOBILE FUTURE

Mobile Future submits these comments proposing specific Commission actions to expedite the deployment of next generation wireless infrastructure. The Commission should provide guidance on the application of federal law to local government review of wireless facility siting applications and local requirements for gaining access to rights of way.[1] Wireless providers in the United States are working toward deploying next generation 5G services to consumers and are enhancing their 4G networks, but overly-burdensome application requirements, significant delays, and excessive fees imposed by some states and localities across the country threaten to undermine providers' ability to rapidly deploy the vast networks of small cell facilities required to maintain the United States' leadership role in wireless. As Chairman Ajit Pai outlined in unveiling his Digital Empowerment Agenda, "Without a paradigm shift in our nation's approach to wireless siting and broadband deployment, our creaky regulatory approach is going to be the bottleneck that holds American consumers and businesses back."[2] Further, "each month spent negotiating with a municipality for access to local rights of way is

[1] *Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Siting Policies*, Public Notice, 31 FCC Rcd 13360 (WTB 2016) ("Public Notice").

[2] Remarks of FCC Commissioner Ajit Pai, "A Digital Empowerment Agenda," The Brandery, Cincinnati, Ohio (Sep. 13, 2016) ("FCC Chairman Pai's Digital Empowerment Agenda"), https://apps.fcc.gov/edocs_public/attachmatch/DOC-341210A1.pdf.

another month that consumers must wait for faster service and another month that work crews must sit idle."[3]

Companies have taken great strides toward developing 5G networks in the United States. In January, Verizon announced that by mid-year it will deliver pre-commercial 5G services to select customers in 11 markets throughout the country on its newly built 5G network[4] and that it has been densifying its network, both for better 4G service and in anticipation of 5G, using advanced small cell deployments.[5] AT&T has also moved into another round of 5G testing in Austin, Texas and Indianapolis, Indiana and expects to achieve data rates of 1 Gbps by the end of 2017.[6] T-Mobile is collaborating with Samsung to conduct 5G lab tests using its 28 GHz spectrum,[7] and Ericsson and Nokia have been involved in multiple trials with a variety of partners.[8] Because 5G networks are not expected to supplant existing 4G LTE networks but enhance them, continued deployment of and upgrades to 4G networks also are critical to meeting consumers' demand for next generation wireless services. The Commission must act swiftly in this proceeding to take all available actions to alleviate barriers to wireless infrastructure deployment for both small and macro cells.

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[3] FCC Chairman Pai's Digital Empowerment Agenda, at 7.

[4] Verizon to deliver 5G service to pilot customers in 11 markets across U.S. by Mid 2017, News Release (Feb. 22, 2017), http://www.verizon.com/about/news/verizon-deliver-5g-service-pilot-customers-11-markets-across-us-mid-2017.

[5] *New Network Technologies Coming for Our Customers in 2017*, Verizon Blog (Jan. 23, 2017), http://www.verizon.com/about/news/new-network-technologies-coming-our-customers-2017-building-2016-accomplishments.

[6] *See AT&T Network 3.0 Indigo Redefining Connectivity through Software Control, Big Data, and Blazing Speed*, AT&T Newsroom (Feb. 1, 2017), http://about.att.com/story/indigo_redefining_connectivity.html; *see also* Chris Donkin, AT&T Prepares Next Round of 5G Testing (Feb. 3, 2017), https://www.mobileworldlive.com/featured-content/top-three/att-prepares-next-round-of-5g-testing/

[7] Sue Marek, *5G Trials and Tribulations: A Guide to Global 5G Operator Tests* (Dec. 1, 2016), https://www.sdxcentral.com/articles/news/5g-trials-and-tribulations-a-guide-to-global-5g-operator-tests/2016/12/.

[8] Jon Gold, *2016 – The Year 5G Wireless Testing Took Off* (Nov. 21, 2016), http://www.networkworld.com/article/3143106/mobile-wireless/2016-the-year-5g-wireless-testing-really-took-off.html.

I. THE COMMISSION SHOULD REAFFIRM THAT THE *CALIFORNIA PAYPHONE* STANDARD APPLIES NATIONWIDE FOR PURPOSES OF DETERMINING WHETHER LOCAL GOVERNMENT PRACTICES "PROHIBIT OR HAVE THE EFFECT OF PROHIBITING" PROVISION OF SERVICE UNDER SECTIONS 253(a) AND 332(c)(7)

Sections 253(a) and 332(c)(7) of the Act provide that "[n]o State or local statute or regulation, or other state or local requirement, may prohibit or have the effect of prohibiting the ability of any entity" to provide personal wireless services or other telecommunications services.[9] However, the Commission has not provided clear guidance on what local government practices "prohibit or have the effect of prohibiting" the provision of service. As a result, different judicial interpretations have created a patchwork of standards across the country, which in many instances impose unreasonable burdens on providers to demonstrate the need for particular sites, resulting in delay and even denial of those sites.[10]

The Commission should move to eliminate these conflicting interpretations and reaffirm that the standard adopted in the Commission's 1997 *California Payphone* decision. In that case, the Commission explained that when determining whether a local government action "has the effect of prohibiting" the provision of service, the proper standard is whether the action "materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced regulatory environment."[11] The Commission also should clarify that local governments may not insert themselves into the details of network design and coverage, such as by requiring providers to demonstrate gaps in coverage or that a particular location or technology is required, or is the only available option, to achieve coverage. These clarifications will better effectuate the underlying purpose of Sections 253 and 332, eliminate the need for providers to

[9] 47 U.S.C. §§ 253(a), 332(c)(7)(B)(ii).

[10] *Public Notice*, 31 FCC Rcd at 13370-71.

[11] *California Payphone Association Petition for Preemption*, 12 FCC Rcd 14191, 14206 ¶ 31 (1997).

make different, burdensome showings in different jurisdictions, and will reduce the costs and time associated with deploying infrastructure.

The Commission should also make clear that any moratoria or *de facto* moratoria on the acceptance, processing and acting on siting requests violate Sections 253 and 332. These actions delay, and therefore inhibit (indeed, they prevent), providers from deploying infrastructure and providing service, as well as from competing with other providers. Moratoria and *de facto* moratoria therefore violate the core purpose of Sections 253 and 332. The Commission must make clear that moratoria are prohibited under the Act.

II. THE COMMISSION SHOULD INTERPRET SECTION 332(c)(7) TO INCLUDE A DEEMED GRANTED REMEDY AND SHOULD SHORTEN THE TIME PERIODS CONSIDERED "REASONABLE" UNDER THE ACT

Under Section 332(c)(7)(B)(ii), state and local governments are required to act on wireless siting requests "within a reasonable period of time."[12] The Commission previously found that 90 days is a reasonable period of time for state and local governments to process collocation applications and that 150 days is a reasonable period of time in which to process all other applications.[13] Given that there is record evidence that a number of localities process collocation and new site applications in shorter timeframes, local governments' growing familiarity with the wireless siting process, and the fact that small cells raise far fewer issues for localities to consider in processing applications than macro cell deployments, the Commission should find that applications for facilities must be processed in more reasonable time frames under Section 332.[14] Specifically, the Commission should find that 60 days is a reasonable

[12] 47 U.S.C. § 332(c)(7)(B)(ii).

[13] *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994, 14012 ¶45 (2009), *aff'd, City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff'd*, 133 S. Ct. 11863 (2013).

[14] *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12957 ¶ 215 (2014) ("2014 Infrastructure Order"), *aff'd, Montgomery County v. FCC*, 811 F.3d

period of time for localities to process all[15] small cell collocation applications, and that 90 days is a reasonable period for all other small cell applications.

The Commission should further determine that when a locality does not act on a siting application within a "reasonable period of time" under Section 332,[16] the application will be deemed granted. Currently, when a state or locality fails to act on an application within the given time frame, the applicant's only remedy is to go to court. Under this framework, an applicant is forced to decide whether to litigate the matter, with accompanying long delays and high legal costs, or continue to pursue the application with the locality, with no guarantees as to timing or disposition. But in the Commission's 2014 Order interpreting Section 6409(a) of the 2012 Spectrum Act,[17] the Commission explained, "withholding a decision on an application indefinitely, even if an applicant can seek relief in court or in another tribunal, would be tantamount to denying it."[18] And just as in the context of Section 6409(a), Section 332 "does not permit [State and local governments] to delay this obligatory … step indefinitely."[19] Including a deemed granted remedy in the Section 332 shot-clock process also "will directly serve the broader goal of promoting the rapid deployment of wireless infrastructure."[20] The remedy is fully within the Commission's authority under the statute and consistent with Congressional intent. The Commission need not be concerned that the judicial remedy provided in Section

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121 (4th Cir. 2015). The Order notes that various states have statutes requiring that municipalities review applications within 45, 60, or 90 days. *Id.*

[15] Pursuant to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("2012 Spectrum Act"), Pub. L. No. 112-96 § 6409(a) (2012) (codified at 47 U.S.C. § 1455(a)), local governments are already processing many collocation applications within this timeframe.

[16] 47 U.S.C. § 332(c)(7)(B)(ii).

[17] 47 U.S.C. § 1455(a).

[18] *2014 Infrastructure Order*, 29 FCC Rcd at 12961 ¶ 227.

[19] *Id.*

[20] *Id.*

332(c)(7)(B)(v) would become superfluous with the adoption of a deemed granted remedy.[21] Applicants may still need to seek injunctive relief from a court to compel the issuance of a permit in instances when a state or locality fails to act, even with a deemed granted remedy.

III. THE COMMISSION SHOULD PROVIDE GUIDANCE ON "FAIR AND REASONABLE COMPENSATION" UNDER SECTION 253(c)

The Commission should provide specific guidance as to what constitutes "fair and reasonable compensation" on a "competitively neutral and nondiscriminatory basis" under Section 253(c) of the Act.[22] As the Commission notes, providers face a wide variety of fees when seeking to place wireless facilities in rights of way, with localities in some cases even seeking a share of the provider's revenue.[23] These fees conflict with the statute, because they are revenue-generating as opposed to "compensation" for the services performed by the locality (reviewing/processing siting applications and managing the rights-of-way). The fees unreasonably increase the cost of doing business and ultimately inhibit providers' abilities to expand and deploy service to consumers.

Specifically, the Commission should clarify that "fair and reasonable compensation" is limited to a locality recovering its actual, incremental costs directly related to the provider's presence in the right of way. The Commission should make clear that third party consulting fees are not reasonable under the statute. Finally, any wireless facility siting fees must be non-discriminatory and must not exceed those imposed on other providers for similar access.

IV. CONCLUSION

The Commission should provide guidance regarding the proper interpretation of Sections 332(c)(7) and 253(a) and (c) of the Act, as set forth above. Taking these actions will reduce

[21] 47 U.S.C. § 332(c)(7)(B)(v).

[22] 47 U.S.C. § 253(c).

[23] *Public Notice*, 31 FCC Rcd at 13373-74.

barriers to infrastructure deployment and speed the provision of 5G service and continued enhancement of 4G service to consumers in the United States.

Respectfully submitted,

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